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# ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES EDWARD HELLER,  
Plaintiff

vs.

JAMES DOHERTY, ROBERT START,  
MARTIN WILLIAMS, PETER  
KESSLER, MICHAEL SOFIA,  
GARY McFARLAND and PRIME  
CARE MEDICAL,

Defendants

: NO. 1:CV 01-0828

: (Honorable Yvette Kate)

FILED  
HARRISBURG  
OCT 01 2001  
MARY E. D'ANDREA, CLERK  
PSF  
DEPUTY CLERK

MOTION TO DISMISS OF DEFENDANT  
PRIME CARE MEDICAL

AND NOW, comes Defendant Prime Care Medical (hereinafter "Prime Care"), by and through its counsel, Goldberg, Katzman & Shipman, P.C., who file this Motion to Dismiss by respectfully stating the following:

1. This is a pro se prisoner lawsuit filed pursuant to 42 U.S.C. § 1983.

2. Plaintiff alleges that on February 28, 2001, he was injured by various correctional officers while being removed from his cell. See Plaintiff's Complaint, Statement of Claim, Pages 5

and 6.

3. Plaintiff claims that he suffered multiple abrasions and bruises to his face and a broken blood vessel in his right eye which caused blurred vision and discomfort. (See Plaintiff's Complaint, Statement of Claim, Page 6).

4. Plaintiff alleges that Prime Care refused to provide treat his alleged injuries. (See Plaintiff's Amendment to Statement of Claim, Page 3). Though this conflicts with Plaintiff's initial allegation that he was seen by a nurse who gave him ice for his face and placed him upon the list to be seen by a doctor for his alleged injury to his eye. (See Plaintiff's Complaint, Statement of Claim Page 7).

5. Plaintiff does not make any allegation concerning Prime Care's policies and procedures.

6. Plaintiff's Complaint does not request monetary damages, but rather requests the following relief:

I James E. Heller ask the court to take strict disciplinary action against all the individuals named in my complaint. I also ask the court to order my transfer to another county facility until this complaint is resolved, for safety reasons. I fear that once these individuals are served with my complaint they will harm me again. Leaving me in this facility throughout these impending proceedings would place me in imminent danger of serious bodily injury. Also, I will be discriminated against and treated unfairly. Thank you.

(Plaintiff's Complaint Page 8).

7. Plaintiff has since been transferred to the State Correctional Institution at Camp Hill.

8. Plaintiff's Complaint fails to state a claim upon which relief can be granted against Prime Care. Therefore, Prime Care respectfully requests that this Honorable Court dismiss Plaintiff's Complaint pursuant to F.R.C.P. 12(b)(6).

WHEREFORE, Defendant Prime Care Medical respectfully requests that this Honorable Court dismiss Plaintiff's cause of action with prejudice.

Respectfully submitted,

GOLDBERG, KATZMAN & SHIPMAN, P.C.

*John R Ninosky*

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(717) 234-4161  
Attorneys for Defendant Prime Care

Date: 10/1/01

68559.1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing document upon all parties or counsel of record by depositing a copy of same in the United States Mail at Harrisburg, Pennsylvania, with first-class postage prepaid on the 1<sup>st</sup> day of October, 2001, addressed to the following:

Mr. James E. Heller  
Inmate No. ES18110  
SCI Camp Hill  
2500 Liburn Road  
P.O. Box 8337  
Camp Hill, PA 17011-8837

Gerald J. Geiger, Esquire  
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Corveleyn, Wolfe & Fareri  
P.O. Box 511  
Stroudsburg, PA 18360-0511  
Attorneys for Defendants, Doherty, Start, Williams, Kessler,  
Sofia and McFarland

GOLDBERG, KATZMAN & SHIPMAN, P.C.

By John R. Ninosky  
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